Tender for operating restaurant business at a swimming pool under Leisure and Cultural Services Department
Investigation Report

In June 2024, this Office received a complaint from two complainants against the Leisure and Cultural Services Department ("LCSD").

The Complaint

2. The complainants had been the service provider of LCSD, with a permit ("Permit A") to operate general restaurant business at a swimming pool ("the Pool") under the management of LCSD.

3. The complainants alleged that LCSD had not followed the established procedures of inviting tenders four to six months before the expiry of Permit A (i.e. 31 July 2024). Nor had it properly arranged and planned for the maintenance works involving the business premises, causing a delay in the commencement of the open tender procedures for Permit A.

Our Findings

LCSD's Tender Procedures and Time Frame for Granting Permit to Operate Restaurant Business at Its Facilities

4. According to LCSD, the tendering process for granting permit to operate restaurant business at its facilities is conducted in accordance with the Stores and Procurement Regulations ("SPR"), the departmental guidelines on tender procedures formulated based on the SPR, and the schedule of inviting revenue tenders. Generally, about nine months before the start of a new contract, LCSD would consult the Architectural Services Department on whether the restaurant premises meet the latest permit requirements; the tender would be initiated about four to six months before the start of a new contract, such that potential tenderers could bid with closer reference to the latest market situation. However, the SPR has not stipulated that tender procedures for a new contract must be completed before the expiry of existing one.

5. LCSD clarified that the time of inviting tenders is based on the commencement date of new contract, rather than the expiry date of existing one. Where a new contract starts immediately upon the expiry of existing one without any gap, one can interpret that tenders are invited for the new contract about four to six months before the expiry of existing one. In special circumstances, such as when the refurbishment, maintenance or even redevelopment projects for the business premises require more time to complete or are large-scale, the suspension period will be longer. Hence, the tender is not necessarily initiated four to six months before the expiry of existing contract.

Response from LCSD

6. LCSD explained that facilities within the restaurant business area at the Pool had been in continuous use for nearly nine years. After inspection by the works department, renovation and maintenance were considered necessary for many facilities found to be old or decrepit at the premises. Furthermore, in line with the Government's environmental protection and energy-saving policies, LCSD decided to install a solar energy system on the restaurant's rooftop, which would involve multiple procedures according to the works department. Having considered the safety and interests of pool users, LCSD requested the works department to schedule the noisier works for the Pool's closure period (between November 2024 and January 2025), thereby minimising the impact on users and nearby residents. Consequently, LCSD decided to suspend restaurant operations upon expiry of Permit A's contract (on 31 July 2024), enabling the works department to commence the project in parallel.

7. LCSD added that it expected the abovementioned project to complete in January 2025, and the new contract of Permit A to start in February 2025, thus creating a time gap between the existing and new contracts of Permit A. In accordance with the expected commencement date of new contract, LCSD initiated the tender for Permit A in July 2024 (around seven months before the new contract's commencement date) and issued the invitation to tender on 16 July to 77 potential tenderers (including the complainants).

8. LCSD asserted that given the renovation shutdown of the restaurant premises at the Pool, initiating the tender too early would have been unfavourable for potential tenderers to bid with reference to the latest market situation. LCSD considered itself to have fully complied with relevant tender procedures in handling the tender for Permit A.

9. Nevertheless, LCSD recognised that the time gap between Permit A's old and new contracts would cause difficulty in inventory and staffing for the complainants. In June 2024, after receiving their complaint, LCSD explained and clarified the situation and offered assistance to the complainants, in written form and in person, including exploring a two-month contract extension, but the complainants declined. Anyway, the tender for Permit A was completed on 6 August, with a Notice of Conditional Acceptance of Tender issued to the successful tenderer on 23 August 2024.

Our Comments

10. LCSD has explained its handling regarding the tender for Permit A's new contract and why tenders were not invited four to six months before the expiry of existing contract. We recognise that the complainants, as the incumbent holders of Permit A, wished that LCSD promptly initiated the tender for the new contract, so as to ascertain at an early stage whether they could continue operating the restaurant business at the Pool. However, as LCSD revealed, the new contract could not start immediately upon the expiry of existing one due to the large-scale maintenance works required for the restaurant premises. LCSD further noted that inviting tenders too early might affect the bidding decisions of potential tenderers as market situation changed rapidly. We consider these explanations reasonable.

11. In fact, once confirming that Permit A's new contract could start in February 2025, LCSD initiated the tender in July 2024, which complied with the time frame stipulated by departmental guidelines. Meanwhile, LCSD also reached out to the complainants (see **para. 9**). We consider LCSD to have handled the tender for Permit A according to actual circumstances with no delay.

12. Regarding the maintenance works and installation of solar energy system at the Pool's restaurant premises, LCSD has given details on the necessity and project planning (see **para. 6**). According to LCSD's information, discussions with the works department commenced as early as April and November 2023 about the maintenance works and installation of solar energy system. While LCSD said that the complainants were verbally notified of the above matters between December 2023 and May 2024, we consider it advisable for LCSD to promptly and formally notify the complainants in writing once the details of maintenance works were finalised. This would have enabled the complainants to fully grasp and understand LCSD's decisions, and make

corresponding planning for subsequent operation arrangements.

13. Moreover, to enhance transparency for potential tenderers and incumbent permit holders regarding LCSD’s tender procedures and time frame for granting new permit contracts, we recommend that LCSD consider providing them with information about tender schedule (see **paras. 4 and 5**) to avoid misunderstanding or false expectations.

Conclusion

14. Based on the analysis above, The Ombudsman considers the complaint **unsubstantiated**, but there is room for improvement on the part of LCSD in disseminating information to the complainants about the maintenance works of its restaurant premises and tender schedule (see **paras. 12 and 13**).

Recommendations

15. The Ombudsman recommends that LCSD:

(1) learn from this case and share it with relevant staff (especially those responsible for tender exercises) to enhance its handling of similar cases in future;

(2) step up training for relevant staff;

(3) if large-scale maintenance works are required in future for its restaurant premises resulting in suspension of business operations, consider promptly and clearly notifying the incumbent permit holders of the arrangements; and

(4) consider introducing measures to notify tenderers of the latest information on tender schedule to avoid misunderstanding.

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